

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

CINCINNATI BELL ANY DISTANCE INC. PETITION FOR WAIVER

Pursuant to Commission Rule § 1.3,¹ Cincinnati Bell Any Distance Inc. (“CBAD”) requests a waiver of Commission Rule § 64.1320(a),² which mandates an annual audit of payphone call tracking systems.

I. INTRODUCTION AND FACTS

The Commission’s payphone compensation rules require completing carriers, such as CBAD, establish and maintain a call tracking system “that accurately tracks coinless access code or subscriber toll-free payphone calls to completion.”³ Completing carriers must pay compensation to payphone service providers (“PSPs”) on a quarterly basis, and with each such tender of compensation the chief financial officer (“CFO”) of the Completing Carrier must provide a sworn statement that the amount tendered for that quarter is accurate and complete.⁴

The Commission further requires all completing carriers to “undergo an audit of its § 64.1310(a)(1) tracking system by an independent third-party auditor whose responsibility shall be, using methods approved by the American Institute for Certified Public Accountants, to

¹ 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown”).

² 47 C.F.R. § 64.1320(a).

³ 47 C.F.R. § 64.1310(a)(1).

⁴ 47 C.F.R. § 64.1310(a)(3).

determine whether the call tracking system accurately tracks payphone calls to completion.”⁵

Paragraph (c) of the Rule specifies the various factors with which the completing carrier must comply, and that the auditor must verify, in the call tracking system.⁶

The Commission’s rules further require that completing carriers file the initial report of the independent auditor with the Commission as well as with each payphone provider for which the completing carrier completes calls.⁷ In subsequent years, the independent third-party auditor annually must verify that no material changes have occurred concerning compliance with the criteria of the prior year’s audit report or, if a material change has occurred, verify that the material changes do not affect compliance with the audit criteria set forth in paragraph (c) of the Rule.⁸ This annual verification mandate effectively requires that the payphone call tracking system audit be repeated every year in order for the auditor to verify that there have been no material changes or that any material changes have not affected the completing carrier’s compliance.

CBAD established a call tracking system in compliance with the Commission’s rules and has conducted the required annual audits. CBAD engages the National Payphone Clearinghouse (“NPC”) to process its payments to PSPs. CBAD provides all of its payphone call records to the NPC and pays the required compensation to the PSPs associated with those call records. The audit of CBAD’s call tracking system has never identified any deficiencies. For more than a decade, CBAD has been found to be appropriately compensating PSPs. The compensation process is well established and works smoothly.

⁵ 47 C.F.R. § 64.1320(a).

⁶ 47 C.F.R. § 64.1320(c).

⁷ 47 C.F.R. § 64.1320(b).

⁸ 47 C.F.R. § 64.1320(f).

The audit rule was established in 2003⁹ when the payphone business was much larger than it is today and the amount of payphone compensation paid was significant. With the increase in usage of wireless service and other means of communication, there are substantially fewer payphones and payphone calls than at the time the rules were enacted. According to the Commission’s report of Payphone Data from 1997 Through 2016, the number of payphones in service has declined from over 2.1 million at its peak in 1999 to less than 100,000 today.¹⁰ The amount of payphone compensation paid by CBAD has declined by more than 97 percent from 2005 to 2016. In the last year, the total amount of payphone compensation paid by CBAD to PSPs came to less than five figures. But the cost of the required annual audit is essentially fixed and has not materially changed. There is no association between the cost of the audit and the amount of payphone activity. The cost of the annual audit to CBAD is now approximately *five times* the amount of payphone compensation that it pays annually. As payphone use continues to decline, this ratio will only grow worse.

II. ARGUMENT

The Commission may waive specific requirements of its rules if “good cause therefor is shown.”¹¹ The Commission specifically may waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule.¹² The Commission may take into account consideration of hardship, equity, or

⁹ *In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235 (released October 3, 2003).

¹⁰ See, *Payphone Statistics: 1997 – Most Recent*, Wireline Competition Bureau’s Industry Analysis and Technology Division report, posted April 11, 2017 (<https://www.fcc.gov/general/iatd-data-statistical-reports>).

¹¹ 47 C.F.R. § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

more effective implementation of overall policy on an individual basis.¹³ Given the disproportionate cost of the audit compared to the payphone compensation paid by CBAD, continued imposition of the annual audit requirement is inequitable and unduly burdensome and a waiver is justified.

When the annual audit requirement was enacted, the amount of payphone compensation was substantial and the audit was deemed necessary to ensure that completing carriers paid PSPs for all compensable calls. As market conditions have changed, it is no longer rational to expend what it costs to conduct the audit in order to verify payment of what is now an immaterial amount of compensation. The audit requirement could not pass any reasonable cost-benefit analysis in CBAD's case. The cost of the audit has now subsumed the compensation being protected. It makes no sense to spend \$5 to audit \$1 of compensation.

CBAD recognizes that, as long as there are payphones, there will be a need to have a payphone compensation system and to monitor compliance. Relieving CBAD of the audit requirement would not relieve it of its obligation to ensure that it is compensating PSPs for all compensable calls. CBAD has an effective call tracking system and has consistently been in compliance with the payphone compensation rules. However, the Commission retains authority to investigate any complaint that should arise concerning the accuracy of CBAD's call tracking or compensation to PSPs. CBAD could provide an annual officer certification directly to the Commission in lieu of engaging an independent auditor each year. Moreover, the CFO will continue to provide a sworn statement each quarter that the amount tendered to the PSP for that quarter is accurate and complete. These safeguards, taken together with CBAD's long track record of accuracy in call tracking, justifies allowing it to self-certify that its system remains compliant with all requirements. Given the very small amount of payphone compensation for

¹³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

which CBAD is responsible, this is sufficient to protect the financial interests of PSPs to whom CBAD pays compensation.

CBAD has no reasonable alternative to a waiver of the audit rule. The alternative compensation arrangements contemplated by the payphone compensation rules¹⁴ as a substitute for a call tracking system are not reasonable in CBAD's case. The cost of negotiating, implementing and managing individual contracts with the numerous PSPs (with CBAD completing only a small number of calls per year to any single PSP) would outweigh the negligible amount of compensation paid under such individual arrangements. Participation in the current system where one set of call records is sent to a central location at the NPC for processing is a more efficient, effective and accurate method of appropriately compensating PSPs than managing individual compensation arrangements would be.

III. CONCLUSION

CBAD respectfully requests the Commission to consider the disproportionate and unduly burdensome cost of the annual payphone compensation system audit and waive its applicability to CBAD. The audit requirement is overkill in CBAD's case and should no longer be required.

¹⁴ 47 C.F.R. § 64.1320(a).

CBAD also requests that the Commission grant the Petition on an expedited basis.

CBAD is already under contract with an auditor for 2017 and 2018, but can terminate the contract by giving 90 days' advance notice. CBAD needs a prompt decision in order to avoid having the auditor begin work on the 2017 audit and causing CBAD to spend funds on an audit that would be unnecessary.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Karen Brinkmann".

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April 25, 2017